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Attorneys for Defendant RASH CURTIS & ASSOCIATES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SANDRA McMILLION, JESSICA ADEKOYA,
AND IGNACIO PEREZ, on Behalf of
Themselves and all Others Similarly Situated,

Plaintiffs,

v.

RASH CURTIS & ASSOCIATES,

Defendant.

Case No.: 4:16-cv-03396-YGR JSC

**[PROPOSED] ORDER GRANTING
DEFENDANT RASH CURTIS &
ASSOCIATES' MOTION *IN LIMINE*
NO. 1**

DATE: April 12, 2019
TIME: 9:00 a.m.
DEPT: Courtroom 1, 1301 Clay Street,
Oakland, California.

Trial Date: May 6, 2019

1 On March 19, 2019, the Court heard argument on Defendant Rash Curtis & Associates'
2 motion *in limine* No. 1. Having considered the parties' submissions and arguments, the Court hereby
3 GRANTS Defendant's motion *in limine* No. 1.

4 At trial, Defendant may use its screenshot evidence pertaining to its storage of the 5193 cell
5 phone number, associated in Defendant's system with third-party debtor Daniel Reynoso.
6 Specifically, Defendant may introduce at trial a screenshot from its "Beyond" software which shows
7 the results of its May 8, 2015 ECA Advance Trace search for Mr. Reynoso, and a screenshot of its
8 "Edit Tracking" which shows which phone field the 5193 number was stored.

9 These documents were timely produced before the close of discovery on October 25, 2017,
10 and the timestamp showing that they were not captured until October 12, 2017 supports Defendant's
11 argument that their existence was unknown until at least that time. They are relevant with respect to
12 Plaintiff's claim that Defendant obtained the 5193 number through skip tracing, a key issue in
13 dispute. Fed. R. Evid. 402.

14 Barring Defendant from using these documents at trial would be an unwarranted evidentiary
15 sanction; there is no evidence that Defendant's failure to produce them sooner was due to bad faith or
16 active concealment. *Bunch v. U.S.*, 680 F.2d 1271, 1280 (9th Cir. 1982); *Stone v. River*, 960 F.2d 152
17 (9th Cir. 1992); *Campbell Indus. v. M/W Gemini*, 619 F.2d 24, 27 (9th Cir. 1980); *Zambrano v. City of*
18 *Tustin*, 885 F.2d 1473, 1478 (9th Cir. 1989).

19 Rule 26 only requires a party to supplement its disclosures "if the additional or corrective
20 information has not otherwise been made known to the other parties during the discovery process or
21 in writing". Fed. R. Civ. P. 26(e)(1)(A). Here, the relevant information¹ contained within these
22 documents was first made known to Plaintiff when Plaintiff took the deposition of one of Defendant's
23 former supervisors, Steve Kizer, in April of 2017. Under these circumstances, where these documents
24 corroborate what was already known to Plaintiff, exclusion of these documents at trial would be
25 improper.

26
27 ¹ E.g., that the 5193 cell number was not obtained by Defendant from the ECA Advance Trace skip-
28 tracing search and that the 5193 cell number had been stored in phone field 1 in connection with
Daniel Reynoso's debt account.

1 For the foregoing reasons, Defendant's motion *in limine* No. 1 is hereby GRANTED.

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3 Dated: _____

4 YVONNE GONZALEZ ROGERS
5 UNITED STATES DISTRICT COURT JUDGE
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